U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF J-R-P-

DATE: MAY 5, 2016

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, an elementary special education teacher, seeks classification as a member of the professions holding an advanced degree. *See* section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. section 1153(b)(2). She also seeks a national interest waiver of the job offer requirement that is normally attached to this EB-2 immigrant classification. *See* section 203(b)(2)(B)(i) of the Act, 8 U.S.C. section 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director, Texas Service Center, denied the petition. The Director found that the Petitioner qualifies for classification as a member of the professions holding an advanced degree, but that she did not establish that a waiver of a job offer would be in the national interest. We affirmed this finding on appeal and in decisions on five subsequent motion filings by the Petitioner.

The matter is now before us on the Petitioner's sixth motion, a motion to reconsider. On motion, the Petitioner submits letters from herself and the principal of the school where she works, as well as copies of previously submitted documents. She contends that the record demonstrates her eligibility for the benefit sought. She also asks USCIS to reconsider the denial of her petition taking into account her personal circumstances. We will deny the motion.

I. LAW

A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions or legal citations to establish that the decision was based on an incorrect application of law or USCIS policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

To establish eligibility for a national interest waiver, a petitioner must first demonstrate his or her qualification for the underlying visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences arts or business. Because this classification normally requires that the individual's services be sought by a U.S. employer, a separate showing is required

to establish that a waiver of the job offer requirement is in the national interest. *See* section 203(b)(2) of the Act, 8 U.S.C. section 1153(b)(2)

Neither the Act nor the pertinent regulations define the term "national interest." However, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215, 217-18 (Act. Assoc. Comm'r 1998) (*NYSDOT*), set forth several factors which must be considered when evaluating a request for a national interest waiver. First, a petitioner must demonstrate that he or she seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, a petitioner must show that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that he or she will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

II. ANALYSIS

In our previous decisions affirming the denial of the Form I-140, Immigrant Petition for Alien Worker, we found that the Petitioner demonstrated her eligibility as an advanced degree professional, but did not establish that a waiver of the job offer requirement is in the national interest. Specifically, we found that she had not established that the benefits of her proposed work as a teacher are national in scope as required under the second prong of the *NYSDOT* national interest waiver analysis, or that her past record of achievement is sufficient to meet the third prong.

On motion, the Petitioner resubmits documents already in the record and contends that they demonstrate her eligibility for a national interest waiver. In addition, she provides a letter from principal of the in , Maryland, who attests to the Petitioner's expertise, dedication, and her value to the school. The Petitioner does not, however, explain how our previous findings under *NYSDOT* had legal errors or misstatements of fact that would warrant reconsideration.

As in her previous motions, the Petitioner also describes her personal circumstances and the hardships that she and her family would face if she had to leave the country. While we acknowledge the Petitioner's situation, we do not have the discretion to disregard either the regulatory requirements for a motion to reconsider set forth at 8 C.F.R. § 103.5(a)(3), or the eligibility requirements for a national interest waiver set forth in the *NYSDOT* precedent decision. *See* 8 C.F.R. § 103.3(c), which indicates that precedent decisions are binding on all USCIS officers. As noted in our previous decisions, humanitarian concerns cannot establish eligibility for this employment-based immigration benefit.

In addition, we note that the Petitioner asserts in her cover letter that she "was misrepresented and experienced fraud" in interactions with attorneys who previously represented her. Any appeal or motion based upon a claim of ineffective assistance of counsel requires: (1) that the claim be supported by an affidavit of the allegedly aggrieved respondent setting forth in detail the agreement that was entered into with counsel with respect to the actions to be taken and what representations counsel did or did not make to the respondent in this regard, (2) that counsel whose integrity or

competence is being impugned be informed of the allegations leveled against him and be given an opportunity to respond, and (3) that the appeal or motion reflect whether a complaint has been filed with appropriate disciplinary authorities with respect to any violation of counsel's ethical or legal responsibilities, and if not, why not. *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988). The Petitioner has not indicated that she is claiming ineffective assistance of counsel in the instant motion to reconsider, nor has she submitted the required documentation.

III. CONCLUSION

According to 8 C.F.R. § 103.5(a)(3), a motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or policy. The Petitioner in this case has not established through pertinent legal authority that our previous findings regarding her eligibility were erroneous. Accordingly, the motion will be denied. In visa petition proceedings, it is the Petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the Petitioner has not met that burden.

ORDER: The motion to reconsider is denied.

Cite as *Matter of J-R-P-*, ID# 17351 (AAO May 5, 2016)